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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 265

JACK COAST, *Petitioner*,

v.

HUNT OIL COMPANY AND THE OHIO OIL COMPANY,
Respondents

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

CALVIN A. BROWN,
C. F. CURRIER,
LEON O'QUIN,
ARTHUR O'QUIN,
BLANCHARD, GOLDSTEIN,
WALKER & O'QUIN,
Attorneys for Respondent,
THE OHIO OIL COMPANY;
SIDNEY LATHAM,
RALPH B. SHANK,
DAVID T. SEARLS,
J. D. HEAD,
VINSON, ELKINS & WEEMS,
Attorneys for Respondent,
HUNT OIL COMPANY

ALPHA LAW BRIEF CO., HOUSTON

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Statement of the Case

This action was brought by Petitioner, Jack Coast, in the United States District Court for the Western District of Louisiana under the antitrust laws of the United States for an alleged violation of such laws by the Respondents, Hunt Oil Company and The Ohio Oil Company.

In his complaint, Petitioner alleged in substance that he owned in his own right an undivided forty-nine per cent

(49%) interest in a refinery operated under the name of "Coast Oil Company" and sought to recover treble the amount of forty-nine per cent of the refinery's loss of profits caused by the Respondents' alleged violations of the antitrust laws (R. 1-9).

The Respondents, Hunt Oil Company and The Ohio Oil Company, each filed a motion to dismiss Petitioner's complaint for failure to state a claim upon which relief could be granted on the ground that Petitioner, Jack Coast, was not the real party in interest, in that the refinery in which Petitioner had an interest was operated by Coast Oil Company, a partnership composed of Petitioner and Justin R. Querbes, and if any cause of action existed, such action belonged to the partnership as an entity and could only be asserted by the partnership (R. 11-30).

After the Respondents' motions had been filed and argued, but prior to a decision thereon by the District Court, Petitioner filed (1) an amendment of the complaint as a matter of course, wherein Petitioner set forth further details concerning the partnership, Coast Oil Company, and (2) a motion for leave to amend the complaint to set up various alternative claims for relief and for the purpose of some of such alternative claims, Petitioner proposed to make his partner, Querbes, a party defendant to the suit (R. 33-37).

The District Court granted the motions of Respondents to dismiss Petitioner's complaint for failure to state a claim upon which relief could be granted (R. 44-60). Upon appeal, the judgment of the District Court was affirmed by the United States Court of Appeals for the Fifth Circuit (R. 63-67). The opinions of the District Court and the Court of Appeals are reported in 96 F. Supp. 53 and 195 F. 2d 870, respectively.

Both of the Courts below held that under the law of Louisiana, a partnership is an entity entirely separate and distinct from the partners composing it; that the cause of action, if any, attempted to be asserted in this case was vested solely in the partnership because the damages attempted to be recovered consisted of an alleged loss of profits which belonged exclusively to the partnership entity; that the Petitioner, Jack Coast, had not alleged any injury to his business or property and had no interest in the cause of action or any right to assert the same on behalf of the partnership; and that the compulsory joinder of his unwilling partner, Justin R. Querbes, could not be accomplished under Rule 19(a) of the FEDERAL RULES OF CIVIL PROCEDURE since neither Coast nor Querbes had any interest, joint or otherwise, in the partnership claim (R. 44-59, 63-66). The Court of Appeals further pointed out that there was no allegation in the complaint that Querbes was guilty of any fraud or misconduct or, except by inference, that he was even unwise in refusing to consent to the bringing of the action by the partnership, and that no grounds were shown for the Court to interfere with the management of the partnership entity or to authorize the suit to be maintained in its behalf, either by a receiver or by one of the partners (R. 66).

Petitioner has filed in this Court a Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit and is contending that the Court of Appeals erred (1) in holding that Jack Coast is not a person who in his own right has a cause of action under the antitrust laws; (2) in holding that Jack Coast as managing partner of Coast Oil Company could not bring the action on behalf of the partnership; and (3) in denying Petitioner's motion for leave to amend in the respects requested to make Justin R. Querbes a party defendant.

ARGUMENT

I.

The Court of Appeals correctly held that Jack Coast had no cause of action under the antitrust laws because the damages sought were for loss of profits in the business of the partnership, Coast Oil Company, and the cause of action, if any, was vested in the partnership, a distinct legal entity under the substantive law of Louisiana.

Petitioner's first specification of error in his Petition for a Writ of Certiorari is in substance that the Court of Appeals erred in holding that Petitioner is not a "person" who in his own right has a cause of action under the antitrust laws of the United States (P. B. 11). Petitioner cites ATLANTA v. CHATTANOOGA FOUNDRY AND PIPE WORKS ET AL., 127 Fed. 23, affirmed 203 U.S. 390, 51 L. Ed. 241, wherein this Court held that the City of Atlanta is a "person" within the meaning of the antitrust laws and MANDEVILLE ISLANDS FORMS, INC. v. AMERICAN CRYSTAL SUGAR COMPANY, 334 U.S. 219, 92 L. Ed. 1328, in which this Court held that a seller, as distinguished from a purchaser, was a "person" within the meaning of the antitrust laws (P. B. 13-15). Such cases are clearly inapplicable to the instant case. The Court of Appeals did not hold that the Jack Coast is not a "person" within the meaning of the antitrust laws. Instead the Court of Appeals held that the complaint failed to allege any injury to the business or property of Jack Coast (R. 65).

As was pointed out by the Court of Appeals, the only damages which Petitioner alleges or seeks to recover in this action are for treble the amount of profits allegedly lost by the partnership, Coast Oil Company, in the operation of

a refinery in the Cotton Valley Field, Webster Parish, Louisiana (R. 65). The Articles of Partnership reveal that the Coast Oil Company was formed by Coast and Querbes "for the sole purpose of operating that * * * refinery * * * and engaging in the sale and distribution of the products of that operation" (R. 41).

The opinions of the District Court and the Court of Appeals establish conclusively that under the substantive law of Louisiana the partnership, when formed, became a distinct legal entity separate from the partners who compose it. It is the sole owner of the partnership business and claims, and it alone may sue to enforce such claims (R. 49, 64). Accordingly, the loss of profits in the operation of the refinery which Petitioner seeks to recover could only constitute an injury to the partnership business, as distinguished from an injury to Petitioner's business or property. Petitioner, therefore, is not the real party in interest. His suit is analogous to a suit under the antitrust laws by a stockholder or officer of a corporation to recover for injuries to the corporate business. The Federal Courts have repeatedly held that such an action cannot be maintained because injuries to a corporate entity do not constitute an injury to the individual stockholders or officers. GERLI v. SILK ASSOCIATION OF AMERICA, 36 F. 2d 959 (D.C.S.D.N.Y., 1929); AMES v. AMERICAN TELEPHONE AND TELEGRAPH CO., 166 F. 820, (C.C.D., Mass. 1909); LOEB v. EASTMAN KODAK CO., 183 F. 704, (3rd C.A., 1910); WESTMORELAND ASBESTOS CO., INC. v. JOHNS MANVILLE CORPORATION ET AL., 30 F. Supp. 390 (D.C.S.D. N.Y., 1939).

The above authorities are controlling in this case. Petitioner, having failed to allege facts to show that he has personally suffered an injury in his business or property, has failed to state a cause of action under the antitrust laws. The Court of Appeals, in affirming the action of the Dis-

trict Court dismissing Petitioner's Complaint in this case, stated:

> "Assuming for the purposes of this decision that the complaint alleged a violation of the antitrust laws and consequent damage, that damage consists of loss of profits in the partnership business and we think the cause of action is vested in the partnership, a distinct legal entity under Louisiana law. The district court, we think, has correctly distinguished the cases upon which the appellant relies, 96 F. S. 53, at page 60.
>
> "Appellant makes the further contention that, even if it be held that the cause of action for injury to the business was vested in the partnership, that the complaint alleges an injury to the property of the plaintiff because it alleges that, 'Plaintiff in his own right owns an undivided forty-nine (49%) per cent interest in the refinery * * * By virtue of his ownership of forty-nine (49%) per cent of the profits from his operation of it.' We think that the damages sought to be recovered are not for injuries to the refinery itself but for loss of profits which allegedly would have been made from the partnership business of operating the refinery, and that the consequent injuries to the physical properties are too remote to give rise to a separate cause of action." (R. 65)

Petitioner further contends that the holding of the Court of Appeals conflicts with the cases of ROSELAND v. PHISTER MANUFACTURING COMPANY, 125 F. 2d 417 (7th C.A.) and MCWHIRTER v. MONROE CALCULATING MACHINE COMPANY, INC., 76 F. Supp. 456 (D.C.W.D. Mo., 1948). As the Court of Appeals pointed out, both of such cases were clearly distinguished by the District Court as follows:

> "Plaintiff has also cited other cases, such as Roseland v. Phister Mfg. Co., 124 F. 2d 417, and McWhirter v. Monroe Calculating Machine Co., Inc., 76 F. Supp.

> 456, in support of his contention that by the fact of his being managing partner of the Coast Oil Company he has a separate interest or business entitling him to bring this suit in his own name. However, those are cases where the plaintiffs operated as agents or salesmen on a commission basis, whose earnings therefrom were their own, constituted their livelihood and were directly affected by the illegal acts of the defendants. Here, all of plaintiff's efforts and activities, whether as manager or otherwise, were for the partnership, and any profits or income arising therefrom were the property of the partnership, while complainant's interest herein is residuary and could be realized only after the payment of expenses and debts of the firm. See *Gerli v. Silk Assn. of America,* 36 F. 2d 959, and authorities cited therein." (R. 58)

Moreover, in the case of ROSELAND v. PHISTER MFG. CO., 125 F. 2d 417, relied upon by Petitioner, the 7th Court of Appeals specifically recognized that in a case such as this there can be no recovery under the antitrust laws where the plaintiff's only business is the business of the entity in which he holds office or owns an interest. This Court stated:

> "Ordinarily persons who may claim injury to their business under the Act do not include a stockholder making claim for injury or damage to the business of his corporation, *Corey v. Independent Ice Co.*, D.C., 207 F. 459; *Gerli v. Silk Assn. of America, et al,* 36 F. 2d 959, a creditor suing to recover damages to his debtor's business, *Noyes v. Parsons, et al.*, 9 Cir. 245 F. 689, or an officer or director suing to recover for injury to the business of the corporation."

II.

Under the provisions of Rule 17(b) of the *Federal Rules of Civil Procedure*, the capacity of Petitioner to bring an action for the partnership, Coast Oil Com-

pany, must be determined by the law of the State of Louisiana.

Petitioner's second specification of error is that the Court of Appeals erred in holding that Jack Coast, as managing partner of Coast Oil Company, could not bring this action on behalf of the partnership as provided in Rule 17(b) of the FEDERAL RULES OF CIVIL PROCEDURE (P. B. 12). Petitioner argues that since a Federal substantive right is involved, he may sue for the partnership regardless of the State law (P. B. 20). This contention is refuted in the express provisions of Rule 17(b), which are as follows:

> "The capacity of an individual, other than one acting in a representative capacity, to sue and be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. *In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held,* except (1) that a partnership or other unincorporated association, *which has no such capacity by the law of such state,* may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States and (2) that the capacity of a receiver appointed by a court of the United States is governed by Title 28, USC, §§ 754 and 959(a)."
> (Emphasis ours).

Clearly, the provisions of Rule 17(b) upon which Petitioner relies relate only to a partnership or other unincorporated association which has no capacity to sue or be sued by the law of the State in which the District Court is held. In this case, as was pointed out by both the District Court and the Court of Appeals, the partnership entity does have capacity to sue in the State of Louisiana, when appearing

through and represented by all of the partners composing the partnership (R. 54, 65). Therefore, Petitioner's arguments concerning Rule 17(b) are obviously inapplicable. Further, such arguments have been resolved by this Court contrary to Petitioner's contentions.

In BUSBY v. ELECTRIC UTILITIES EMPLOYEES UNIT, 323 U.S. 72, 74, 89 L. Ed. 79 (1944), this Court in commenting upon Rules 17(b) and 81(e) of the FEDERAL RULES OF CIVIL PROCEDURE stated:

> "Under these Rules, a plaintiff may proceed in the District Court for the District of Columbia against an unincorporated labor union in its common name if, by the law of the District, it has capacity to be sued as such. *Only if it be decided that by the local law such a union does not have capacity to be sued in its own name need there be consideration of the second part of Rule 17(b),* which permits a suit against an unincorporated association for the enforcement of 'a substantive right existing under the Constitution or laws of the United States.' " (Emphasis ours).

Since under the law of Louisiana a partnership has the capacity to sue, the only question presented is whether one partner has the capacity to bring an action on behalf of the partnership. Under the express provisions of Rule 17(b) of the FEDERAL RULES OF CIVIL PROCEDURE, this question must be determined by the law of the State of Louisiana where the suit was brought and the cause of action arose. The opinions of the Courts below and the Louisiana authorities cited therein establish conclusively that Petitioner has no such capacity under the Louisiana law (R. 49-54, 64). The law of Louisiana in this respect is not unique. In UNITED COPPER SECURITIES COMPANY v. AMALGAMATED COPPER COMPANY, 244 U.S. 261, 263, 61 L. Ed. 1119 (1917), sev-

eral stockholders of the United Copper Company brought an action under the antitrust laws to recover damages sustained by the United Copper Company by reason of an alleged violation of the antitrust laws. In such suit the plaintiff stockholders joined the United Copper Company as a party defendant after alleging that it had refused to bring the suit. This Court, in affirming the action of the District Court dismissing the complaint on a demurrer, stated:

> "There is no statement in the complaint that the alleged wrongful acts have caused injury to the plaintiffs as individual shareholders; and no recovery is sought for damages to them or to their property. The case involves, therefore, this single question; whether a stockholder in a corporation which is alleged to have a cause of action in damages against others for conduct in violation of the Sherman Act may sue at law to recover such damages in the right of the corporation if, after request, it refuses to institute the suit itself? Insuperable obstacles to the maintenance of the action are presented both by the substantive law and by the law of procedure."
>
> * * *
>
> "But even if the circumstances were such as to justify individual stockholders in seeking the aid of the court to enforce rights of the corporation, it is clear that their remedy is not at law. The particular equitable relief sought in Fleitmann v. Welsbach Co., 240 U.S. 27, 60 L. Ed. 505, 36 Sup. Ct. Rep. 233, was denied; but this denial affords no reason for assuming that the long-settled rule under which stockholders may seek such relief only in a court of equity will be departed from because the cause of action involved arises under the Sherman Law."

III.

The granting of the motion of Jack Coast for leave

to amend to make his partner, Justin R. Querbes, a party defendant would have availed Coast nothing.

Petitioner's third and last specification of error is that the Court of Appeals erred in denying Petitioner's motion for leave to amend in the respects requested to make Justin R. Querbes a party defendant under Rule 19(a) of the FEDERAL RULES OF CIVIL PROCEDURE (P.B. 12). In this connection, the Court of Appeals held as follows:

> "Appellant insists however that under Rule 19(a), F. R. C. P., he has the right to make the partnership an involuntary plaintiff or to make Querbes a party defendant for the purpose of causing the action to be maintained by the partnership. The difficulty is that the plaintiff himself has no standing, joint or otherwise, to maintain this action. Rule 19(a), supra, relates to joinder of parties, it permits a plaintiff under proper circumstances to require another person or persons to join with him, but it makes no provision for a plaintiff to require another person to maintain an action vested solely in such other person, even though its maintenance might result in benefit to the plaintiff. In speaking of the application of this rule as to joinder of a party as 'involuntary plaintiff', Professor Moore says, 'The doctrine can properly be applied only where there is such a relationship that the absent party must allow the use of his name as plaintiff', 3 Moore's Federal Practice (2nd ed.) page 2149." (R. 66)

Petitioner contends that in other jurisdictions in which the question has arisen a partner who refuses to join in a suit, may be made a party defendant. Petitioner cites cases from Arkansas, California, Indiana, New York, Oklahoma, Texas, and Washington, and Federal cases arising in the States of Georgia and New Jersey (P.B. 29, 30). The fallacy

in Petitioner's contention in this respect is that, unlike the State of Louisiana, none of such States is a civil law State, and under the law of each of such States, the partners have an interest in the cause of action. For example, in the Arkansas case cited by Petitioner (INGRAM LUMBER COMPANY v. INGERSOLL & Co., 125 S.W. 139 (Ark. S. Ct. 1910), the Court stated:

> "All the partners had an interest in the subject-matter of the suit and, accordingly, were proper and necessary parties to the action."

In California, the Supreme Court, in the case of REED, ET AL., v. INDUSTRIAL ACCIDENT COMMISSION, 73 P. 2d 1212, 1213, stated:

> "The underlying fallacy in respondent's argument is the assumption that the partnership is a distinct unit, separate from the members thereof. Occasional suggestions of this 'entity' theory of partnership are found in statutes or decisions, but, apart from exceptional situations, a partnership is not considered an entity, but an association of individuals."

In Indiana, in the case of LEWIS, ET AL., v. JOSEPH HARTLEY & SONS, 83 N.E. 2d 438, 440 (App. Ct. 1949), the Court stated:

> "There is no statute in Indiana authorizing actions on Partnership obligations against a partnership as a separate legal entity, and an action to enforce partnership liabilities must be brought against the individual partners.
>
> "The common law does not recognize a partnership as a legal entity distinct from and independent of the persons composing it."

In New York, Judge Learned Hand in ROOSMORE v. COMMISSIONER OF INTERNAL REVENUE, 76 F. 2d 520, 521 (2nd C.A., 1935), announced the law of New York as follows:

> "But our law has never adopted the civil law theory of the firm as a juristic entity; the Uniform Partnership Law as little as any other. That statute recognized the partners as co-owners ('tenants in partnership') of the 'specific' firm property, Section 51 N.Y. Partnership Law."

In Oklahoma, in the case of REPUBLIC SUPPLY COMPANY v. COLBERT, 75 F. 2d 586, 588 (10th Ct. Ap. 1934) cited by Petitioner, the Court said:

> "An obligation owing to a partnership is joint."

In Texas, the Commission of Appeals in ALLISON v. CAMPBELL, 1 S.W. 2d 866, 867, stated:

> "A partnership at common law is not a legal entity but a contractual status. * * * Texas has no statute regulating general partnerships, in the absence of which the rules of common law govern the courts in dealing with the question of general partnership."

In Washington, in HENSON v. FIRST SECURITY AND LOAN COMPANY, 2 P. 2d 85, 86 (Wash. Sup. Ct. 1931), the Washington case relied upon by Petitioner, it was held as follows:

> "* * * it is within the implied power of a partner to institute ordinary legal proceedings in behalf of a firm by using the names of all the parties as such as plaintiffs for the enforcement of the rights of the firm."

In Georgia, in the case of HEWITT v. BROWN, 29 S.E. 2d 326, 328 (Ct. Ap. 1944), the Court held:

> "Under the laws of this State a partnership is not a being distinct from the members who compose it."

In CHARNE v. ESSEX CHAIR COMPANY, ET AL., 92 F. Supp. 164 (D. C. N. J. 1950), the Federal case from New Jersey relied upon by Petitioner, the Court said:

> "Under the Uniform Partnership Act, § 25, in effect in both New Jersey and Pennsylvania, N. J. S. A. 42; 1-25, 59 P. S. § 72, a partner's interest in partnership assets is that of a co-owner. The absent partner's interest would therefore seem to be a joint interest within the meaning of Rule 19(a) such as would be directly affected legally by the adjudication."

Under the civil law of the State of Louisiana, on the other hand, a partnership is recognized as a distinct legal entity. It is the sole owner of the partnership claims, and it alone may sue on such claims. The substantive law of Louisiana with respect to partnerships is stated by the Louisiana Supreme Court in the early case of SUCCESSION OF PILCHER, 1 So. 929, 932 (1887) as follows:

> "In Smith v. McMicken, 3 La. Ann. 322, the Court said: 'The partnership, once formed and put into action, becomes, in contemplation of law, a moral being, distinct from the persons who compose it. It is a civil person which has its peculiar rights and attributes. * * * Hence, therefore, the partners are not the owners of the partnership property. The ideal being, thus recognized by a fiction of law, is the owner; it has the right to control and administer the property to enable it to fulfill its legal duties and obligations; and the respective parties who associated themselves for the purpose of participating in the profits which may accrue, are not owners of the property itself, but of the residuum which may be left from the entire partnership property, after

the obligations of the partnership are discharged.' City of New Orleans v. Gauthreaux, 32 La. Ann. 1128."

It is clear from the foregoing case and the authorities which have followed it that under Louisiana law the partners in a Louisiana partnership have no interest, joint, united, or otherwise, in the partnership property or claims. E. B. HAYES MACHINERY COMPANY v. EASTHAM, ET AL., 84 So. 898 (La. S. Ct. 1920); WOLF v. NEW ORLEANS TAILOR-MADE PANTS COMPANY, 27 So. 893 (La. S. Ct. 1900); TROPOLI v. PAULSON, ET AL., 30 So. 2d 370 (La. S. Ct. 1948); ESTEVE BROS. & COMPANY v. HARRELL, 272 F. 382 (5th C. A. 1921); and HENDERSON'S ESTATE v. COMMISSIONER OF INTERNAL REVENUE, 155 F. 2d 310 (5th C. A. 1946).

Therefore, the provisions of Rule 19(a) of the FEDERAL RULES OF CIVIL PROCEDURE, which relate to the joinder of persons "having a joint interest" in the claim attempted to be asserted are clearly inapplicable to this case where the Petitioner, Jack Coast, who has no interest in the claim, has attempted to join his partner, Justin R. Querbes, who also has no interest for the purpose of asserting a claim belonging solely to the distinct and separate partnership entity.

Moreover, the joinder of Petitioner's partner, Querbes, as a hostile defendant would not remedy the failure of the complaint to state a cause of action. It is well settled in Louisiana that the mere joinder of all of the partners is not sufficient to state a cause of action upon a partnership claim. Instead, the suit must be brought by the partnership entity acting by and through all of the partners in their capacity as partners and as collectively representing and bringing the partnership into Court.

In E. B. HAYES MACHINERY COMPANY v. EASTHAM ET AL., 84 So. 898, 899 (La. S. Ct., 1920), the Court said:

> "So long as the partnership is not dissolved, it alone can maintain an action on the firm's claims, and *even though all its members join therein, such a suit cannot be maintained in the absence of the partnership as a party plaintiff.*" (Emphasis ours.)

In WOLF v. NEW ORLEANS TAILOR-MADE PANTS COMPANY, 27 So. 893 (Louisiana S. Ct., 1900), all of the partners appeared as plaintiffs in the suit and made reference in their pleadings to the fact that they were "conducting a commercial business in the City of New Orleans under the firm name of 'B. J. Wolf & Sons.' " However, the Louisiana Supreme Court held that these allegations were not sufficient to enable the individual partners to maintain a suit on a claim owned by the partnership, stating:

> "Plaintiffs' pleadings show affirmatively that they were associated together, conducting a commercial business under a firm name. Resulting from that fact, followed the creation of a commercial partnership with a firm name. It was an entity, for the purpose of rights and obligations, of suits and of judgments for and against it, differing from the individuals creating and composing it. Suits in its favor should be brought as a partnership, in the firm name, and as appearing through and represented by all of the partners composing the partnership; their full names and residence being set out in the petition. Plaintiffs recite the fact that they were conducting a commercial business under the firm name of B. J. Wolf & Co., but they do not declare that in appearing in the suit they do so in their capacities as partners of the partnership, and as collectively representing and bringing the partnership into court."

In this case the complaint affirmatively alleges that Querbes, the owner of 51% of the partnership, "has refused to consent to or join in the bringing of such an action as

this in behalf of Coast Oil Company." (R. 34). The joinder of Querbes as a hostile defendant obviously could not change the fact that he has refused to consent to the suit being brought by the partnership. Therefore, even if he could be made to appear as a defendant, such compulsory and unwilling appearance would not constitute an appearance of the partnership entity because the firm still would not be represented by and acting through all of the partners in their capacities as partners and as collectively bringing the partnership into Court in the manner required by the above cited Louisiana authorities.

As has been noted above, Rule 17(b) of the FEDERAL RULES OF CIVIL PROCEDURE requires that the capacity of the Petitioner to sue must be determined by the law of Louisiana. The opinion of the Court of Appeals establishes beyond dispute that under such Louisiana law, the Petitioner has no capacity, either individually or by the compulsory joinder of his partner, Querbes, to bring this action by or for the partnership. Obviously, therefore, the attempted joinder of Querbes was improper and would have availed Petitioner nothing. Having failed to state a cause of action by the real party in interest in the manner required by the controlling substantive law of the State of Louisiana, the complaint was properly dismissed.

Conclusion

For the reasons hereinabove set forth, it is respectfully submitted that the Petition for Writ of Certiorari should be denied. The decision of the Court of Appeals is based upon and in conformity with the substantive law of Louisiana as established by the Supreme Court of that State. The decision is not in conflict with any decision of another Circuit Court of Appeals or of this Court, but on the con-

trary, is in harmony with the applicable decisions of other Circuit Courts of Appeals and this Court.

Respectfully submitted,

CALVIN A. BROWN,
539 South Main Street,
Findlay, Ohio;
C. F. CURRIER,
Commercial National Bank Bldg.,
Shreveport, Louisiana;
LEON O'QUIN,
ARTHUR O'QUIN,
BLANCHARD, GOLDSTEIN,
WALKER & O'QUIN,
First National Bank Building,
Shreveport, Louisiana;
Attorneys for Respondent,
THE OHIO OIL COMPANY;
SIDNEY LATHAM,
700 Mercantile Bank Building,
Dallas, Texas;
RALPH B. SHANK,
730 Mercantile Securities Bldg.,
Dallas, Texas;
DAVID T. SEARLS,
J. D. HEAD,
VINSON, ELKINS & WEEMS,
Esperson Building,
Houston, Texas,
Attorneys for Respondent,
HUNT OIL COMPANY

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 265

JACK COAST, PETITIONER

vs.

HUNT OIL COMPANY AND OHIO OIL COMPANY

REPLY BRIEF ON BEHALF OF JACK COAST IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

WILLIAM H. BRONSON
901 Commercial Building
Shreveport, Louisiana
Counsel for Petitioner

LECOMTE, SHREVEPORT, LOUISIANA

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1. Petitioner is a person protected by the anti-trust laws and his position is not analogous to a stockholder in a corporation. Petitioner has been personally injured in his business and property and he is the real party in interest ..... 3 - 10

2. If the partnership, Coast Oil Company, as such, has no capacity to sue under Louisiana law, the suit may be brought in the name of the partnership under Rule 17(b), Federal Rules of Civil Procedure, since a federal substantive right is involved ..... 10 - 12

3. The motion of petitioner to make Justin R. Querbes a party to the suit under Rule 19(a), Federal Rules of Civil Procedure, should be allowed. The motion is not governed by Louisiana law, and, if granted, all parties would be before the court ..... 12 - 16

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